IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/11/2004

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THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE PRABHA SRIDEVAN

W.P.NO.3088 OF 1999
and W.P.Nos., 270, 4312, 7113, 12293, 15466 OF 2000 & 29470 OF 2002
and
WPMP.NOs.4404 of 1999, 401, 6624, 10568, 22492 of 2000 &

W.P.No.3088/1999

1. Union of India,
rep. by Secretary,
Department of Posts,
New Delhi.

2. Chief Postmaster General,
Tamil Nadu Circle, Chennai. .. Petitioners

-Vs-

1. National Association of Pensioners,
rep. by its Secretary,
No.7, Athyanaranya Street,
West Mambalam, Chennai 33.

2. S. Sundaresan

3. The Registrar,
Central Administrative Tribunal,
(Madras Bench) Chennai 104. .. Respondents

Petitions filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioners : Mr.V.T. Gopalan
in WPs.3088/1999 Addl. Solicitor General
& 4312/2000 Assisted by
Mr.T.S. Sivagnanam, SCGSC

For Petitioners : Mr. Mohanram
in WP.15466,270,7113, SCGSC

12293/00 & 29470/02

For Respondents 1-2 :
in WP.3088/1999 Mr.A. Murugesan
For Respondents 2-7
in WP.15466/2000 : Mr. S.Ramaswamy Rajarajan

For Respondent-2 : Mr.K.V,.Srinivasa Raghavan
IN WP.29470/2002 for Mr.K.S. Govinda Prasad

:COMMON JUDGMENT

P.K. MISRA, J

The brief facts giving rise to the present set of writ petitions filed by the Union of India and the Subordinate Officers in the Postal Department are as follows:-
There is a practice in the Postal Department to engage retired employees of the Postal Department as short duty Postal Assistants (hereinafter referred to as "SDPAS") in various Post Offices to meet the peak hour traffic, that is to say, heavy booking and posting in the evening besides periodical and seasonal spells, such as on the eve of New Year, Diwali, etc. The Postal Department also engage persons in the list of candidates for direct recruitment as "Reserved Trained Pool Assistants", in short "RTPAs" to the very same work. All such persons, who are engaged in the above capacity, are paid wages on hourly basis. While calculating the wages payable to RTPAs, calculation is based on salary as well as Dearness Allowance. However, while calculating hourly wages payable to the retired persons employed as SDPAs, Dearness component is ignored. Obviously on the basis of such calculation, the retired persons engaged as SDPAs receive hourly wages at a lesser rate as compared to RTPAs for doing the very same work. To mitigate such grievance, the retired persons engaged on the aforesaid basis had knocked at the doors of Central Administrative Tribunal in Madras Bench as well as in other places. On many earlier occasions, such O.As filed by the aggrieved persons had been allowed and the Department had been directed to pay hourly wages on the very same rate as applicable to RTPAs, obviously, by following the principle that there should be equality in the matter of payment of wages for doing the very same work. Many earlier decisions of the Tribunal have already been given effect to by the Department. However, notwithstanding the fact that such orders were implemented by the Department on various earlier occasions and may be in various other States, the Union of India and other superior Officers of the Postal Department had thought it fit to challenge similar directions issued by the Central Administrative Tribunal, Madras Bench in some later cases.

2. The main contention raised in these writ petitions is to the effect that the retired postal employees, who are re-engaged as SDPAs, cannot claim equality with the Reserved Trained Pool Assistants (RTPAs), as the persons in the former category are already receiving Dearness Allowance on

the pension payable to them and whereas the persons belonging to the latter category, who are persons waiting for their regular employment, are engaged wherever there is necessity and they stand on a different category. However, there is no dispute that the nature and quality of the work rendered by the persons belonging to either category are the same. It is also not disputed that the practice of engaging RTPAs on the aforesaid basis has been discontinued in the meantime, since about last 3 to 4 years.

3. On behalf of the petitioners in the different writ petitions, arguments have been advanced by the learned Additional Solicitor General as well as Thiru. Mohan Ram, SCGSC, who has appeared in the connected writ petitions. Their basic contention is to the effect that since two categories are different, there is no discrimination. It is also submitted by them that since Dearness Allowance is also included in the pension payable to the retired persons, there is no justification for them to claim Dearness Allowance.

4. Learned Addl. Solicitor General has placed strong reliance upon the decision reported in (1995) 2 SCC 32 (UNION OF INDIA AND OTHERS v. G. VASUDEVAN PILLAY AND OTHERS) in support of his contention that denial of wages by taking into account the dearness relief factor is not discriminatory.
In the aforesaid decision, the question was:
 (1) Whether the decision of the Union of India not to allow Dearness Relief (DR) on pension to the ex-servicemen on their reemployment in a civil post is in accordance with law or not;
(2) Whether denial of DR on family pension on employment of dependants like widows of the ex-servicemen is justified or not; and
(3) Reduction of pay equivalent to enhanced pension of those exservicemen who were holding civil posts on 1-1-1986, following their reemployment, is permissible or not.
While upholding the contention of the Union of India, the Supreme Court observed as follows :-
8. It has, however, been strenuously contended by learned counsel appearing for the re-employed ex-servicemen that pension being a right (and not a bounty) available to a retired employee as held in Nakara (AIR 1983 SC 130) and DR being a part of pension, right to receive the same could not have been infringed merely because the incumbent sought re-employment to take care of the hardship which he might have otherwise faced after retirement. To sustain the submission, strength is sought to be derived from the decision of the Kerala High Court in Narayanan V. Union of India in which a view has been taken that the DR became an integral part of pension, because of which it could not have been discontinued on re-employment. As against this, the view of the Delhi High Court in Civil Writ No.1699 of 1992 (disposed of on 23-2-1993) is that the DR is different from pension. For the disposal of the present cases it is not necessary to express any opinion on this aspect of the matter inasmuch as, according to us, even if Dearness Relief be an integral part of pension, we do not find any legal inhibition in disallowing the same in cases of those pensioners who get themselves re-employed after retirement. In our view this category of pensioners can rightfully be treated differently from those who do not get re-employed; and in the case of the re-employed

pensioners it would be permissible in law to deny DR on pension inasmuch as the salary to be paid to them on re-employment takes care of erosion in the value of the money because of rise in prices, which lay at the back of grant of DR, as they get Dearness Allowance on their pay which allowance is not available to those who do not get re-employed.
9. We, therefore, hold that the ex-servicemen were rightly debarred from Dearness Relief on their pensions after they got themselves reemployed to any civil post under the Government of India.

5. We do not think the ratio of the aforesaid decision is applicable to the facts and circumstances of the present case. In the said case, the contention was to the effect that the ex-servicemen on their re-employment were not being paid Dearness Allowance on their pension. The Supreme Court held that since they were getting Dearness Allowance on their pay, on being re-employed there was no justification in their grievance, and there was no discrimination between them and other ex-servicemen, who were getting Dearness Relief on the pension amount. The precise question in the present case is to the effect that whether a person is entitled to get equal pay for the equal work and that was not the question in the decision before the Supreme Court.
6. Learned Additional Solicitor General has also placed reliance upon a Division Bench decision of this Court reported in 2003-1-L.W. 44 S.N. (G. RAMANUJAM v. UNION OF INDIA, REP. BY THE SECRETARY TO GOVT. MINISTRY OF LAW AND JUSTICE, NEW DELHI & OTHERS). In the said decision, the contention raised on behalf of the retired Judge of the High Court, who had been re-employed as Vice Chairman of the Central Administrative Tribunal, to the effect that while paying his salary as Vice Chairman of the Central Administrative Tribunal, the amount payable to him towards his pension should not be deducted, was repelled by the High Court. The contention to the effect that such retired Judge of the High Court employed as Vice Chairman was not being paid the same amount as compared to a Vice Chairman employed for the first time from the Bar, was found unjustified.
We do not think the ratio of the said decision is applicable to the present case.

7. The decision reported in 2003 WLR 412 (JUSTICE P. VENUGOPAL v. UNION OF INDIA & 2 OTHERS) was on the question as to whether the services rendered by a High Court Judge while he was engaged as One Man Commission of Inquiry should be counted for the purpose of counting the pension and such contention was repelled by the High Court. Again we do not find anything in the said decision which can be made applicable to the present case.

8. In the present case, the basis of the claim is to the effect that the retired persons, who are engaged to render part-time service on hourly wages, should be paid equal pay at par with other persons who were engaged on such hourly basis. The basic claim is therefore that they should get equal pay for equal work. The claim is not that they should get Dearness

Allowance on their re-employment. As a matter of fact, it cannot be said that such persons are □re-employed□ in the sense it was understood in the Supreme Court decision or the two Madras High Court decisions cited by the Addl. Solicitor General.

9. Apart from the aforesaid basic submissions which were advanced by the Addl. Solicitor General, Mr.K. Mohan Ram, SCGSC, who has appeared in the connected WPs, has contended that as per the Circular issued by the Department rate had been fixed at a lower rate and the retired persons having voluntarily agreed to work on such rate, cannot subsequently turn around and claim payment at higher rate.

10. It is no doubt true that in some of the Circulars it was made clear that the retired persons willing to work at the rate indicated should alone be allowed to work. However, if the matter would have rested on the question of enforcement of a contract alone, to some extent, the contention raised by the petitioners could be said to have some force. The contention which has been raised on behalf of the Respondents has strong roots embedded in Article 14 of the Constitution of India. What is contended is that for doing the very same work, equal payment should be made by the very same employer in the very same setting. Since the right of equality is being violated, obviously there cannot be any estoppel against the Constitution or any waiver of the fundamental right. Moreover, in the Circular, only rate payable is offered, but it is no where indicated that the other persons would be getting higher payment for doing the very same work. At any rate, since the right to get equal pay for equal work is a well recognised principle, we do not think the question of estoppel or waiver can arise.

11. The matter can be looked at from another angle. It is already noticed that so far as other employees in the Madras Circle are concerned, they had succeeded in their earlier cases and it is not disputed that the Department has accepted the verdict in those cases. However, the Department is trying to contend that merely because some wrong decisions earlier were not challenged, will not prohibit challenging such wrong decisions at this stage. This submission is sought to be supported by the decision of the Supreme Court in (2000) 9 SCC 94 (STATE OF BIHAR AND OTHERS v. KAMESHWAR PRASAD SINGH AND ANOTHER). We do not think the ratio of the said decision would be applicable to the present case. First of all the claimants are not trying to enforce some wrong orders of the Government merely because such wrong orders were implemented by the Government in respect of other persons. As a matter of fact, even in some of the writ petitions it has been indicated that Bangalore Bench of the Central Administrative Tribunal had rendered a different finding. We now find that as a matter of fact such decision of the Central Administrative Tribunal, Bangalore Bench had been subsequently overruled by the Full Bench of the Central Administrative Tribunal, Bangalore. Such decision of the Full Bench of Central Administrative Tribunal is reported in 2000(2) ATJ 434 (R. SRIRANGAIAH AND OTHERS v. UNION OF INDIA AND OTHERS). It is apparent that such decision of the Full Bench of the Central Administrative Tribunal has remained unchallenged. It is obvious that such Full Bench decision is applicable to all the matters to be dealt with by the Central Administrative Tribunals through out the country. Even though the High Court is not bound by the Full

Bench decision of the Central Administrative Tribunal and, can come to a different conclusion, such a contingency would give rise to certain anomalous situation in the sense that all such retired postal employees re-engaged on hourly basis would have the benefit of the decision of the Full Bench, Central Administrative Tribunal through out the country. Whereas the retired employees only within the Madras Circle would be deprived of the benefit. Here again such benefit would be applicable to earlier cases which have become final and only in respect of the present respondents there would be a discordant note.

12. Apart from the above reasons, it is considered that at present there is no employment of any fresh person on the aforesaid basis and only the retired persons are being engaged and a particular rate had already been fixed for them. In other words, the question as to whether there would be parity between such persons and fresh appointed persons would not crop up in future.

13. Having regard to all these facts and also keeping in view the fact that substantial justice had been rendered, we do not feel this is a fit case where the order passed by the Central Administrative Tribunal in the present batch of writ petitions could be interfered with. The writ petitions are accordingly dismissed, however, without any order as to costs.

Index : Yes
Internet: Yes

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To

1. Union of India,
rep. by Secretary,
Department of Posts,
New Delhi.

2. Chief Postmaster General,
Tamil Nadu Circle, Chennai.

3. The Registrar,
Central Administrative Tribunal,
(Madras Bench) Chennai 104.